



Federal Communications Commission  
Washington, D.C. 20554

JAN 29 1998

11/11/97 10:00 AM

97-182

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JAN 29 1998

The Honorable Richard J. Durbin  
United States Senate  
364 Russell Senate Office Building  
Washington, D.C. 20510

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Dear Senator Durbin:

Thank you for your letter dated December 8, 1997, on behalf of your constituent, Mayor Jacqueline Gorell, of Skokie, Illinois, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in her community. Your constituent's letter refers to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter and your constituent's letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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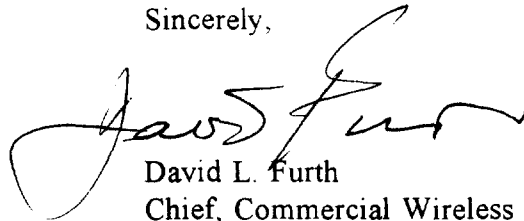
The Honorable Richard J. Durbin

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth". The signature is fluid and cursive, with a large initial "D" and "F".

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

KS

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437032

Jacqueline Gorell  
Mayor

October 28, 1997

Honorable Richard J. Durbin  
230 S. Dearborn  
Suite 3892  
Chicago, Illinois 60604

Dear Senator Durbin:

We are writing to you to ask your assistance in stopping the proposed rulemaking by the FCC that will preempt local zoning regulation of the location of cellular, radio and TV towers that was affirmed by the 1996 Telecommunications Act passed by Congress. Proposed rules which are in conflict with the Village's zoning authority are as follows:

#### Radio and TV Towers

The FCC has issued a proposed rule that would preempt local zoning of radio and TV towers by establishing an unrealistic period of 21 to 45 days for municipalities to act on any local permit. Any permit request is automatically deemed granted if the municipality doesn't act in this timeframe, even if the application is incomplete or violates local laws. All appeals of zoning and permit denials would go directly to the FCC, not to the local courts.

The Village of Skokie's zoning process takes 60 to 90 days to complete for all types of petitions. More than 21 to 45 days are required to properly review a request and provide legal notice to adjacent property owners that is required by State law.

#### Cellular Towers

The FCC indicates that it may overturn local zoning decisions, even though they are otherwise completely acceptable if it believes they were tainted by radiation concerns. The FCC's decision cannot be appealed to the courts and the FCC does not need to rely on the reasons a municipality gives for its decision, rather it may substitute its judgment as to what the true reasons were for the municipal action.

Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act. Zoning decision by the Village of Skokie on antenna towers and other requests are made to protect the health, safety and welfare of its citizens. All

October 28, 1997

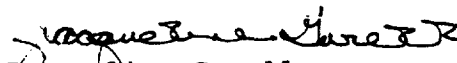
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decisions are made based on strict findings of fact prescribed by state law. Thus, The proposed FCC rulemaking would violate the Village's local zoning authority and state law.

Please do three things to stop the FCC: First contact new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani asking them to stop these intrusions on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the authority to preempt local zoning authority.

Thank you for your consideration in these matters.

Very truly yours,

  
Jacqueline Gorell  
Mayor

JBG:em

cc: Albert J. Rigoni  
Village Manager

Nori Van Elzen  
Assistant to the Village Manager

North West Municipal Conference  
Illinois Municipal League